

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

SACRAMENTO

In the Matter of the Licenses and Licensing
Rights of

MEGA LIFE & HEALTH
INSURANCE COMPANY,

MID-WEST NATIONAL LIFE
INSURANCE COMPANY OF
TENNESSEE,

Respondents.

File No. UPA01017778
OAH No. N2004030501

**SECOND AMENDED ORDER TO
SHOW CAUSE**

(Ins. Code §§ 790.03, 790.05; 790.035;
10172.5(b), (c), 10123.13);

I. ORDER TO SHOW CAUSE

The Insurance Commissioner of the State of California (Commissioner) has reason to believe that the above respondents, have been engaged and/or are engaging in this State in unfair or deceptive acts or practices as set forth in the statement of charges contained herein, each falling within Section 790 et seq. of the California Insurance Code (CIC) and title 10, California Code of Regulations (CCR) sections 2695.1 through 2695.17.

The Commissioner has reason to believe that a proceeding with respect to the alleged acts of respondents would be in the public interest.

Therefore, pursuant to the provisions of section 790.05 of the CIC, respondents, MEGA LIFE & HEALTH INSURANCE COMPANY (MEGA) and MID-WEST NATIONAL LIFE INSURANCE COMPANY OF TENNESSEE (MID-WEST), are ordered to appear before the

1 Commissioner, or his authorized representative, on the 24th and 25th day of February, 2005, at the
2 Office of Administrative Hearings, 560 J Street, Suite 300, Sacramento, California, at 9:00 a.m.,
3 and show cause, if any cause there be, why the Commissioner should not issue an Order to said
4 Respondents requiring them and each of them to Cease and Desist from engaging in the methods,
5 acts, and practices set forth herein and for payment of penalty pursuant to CIC section 790.035, as
6 set forth in the Statement of Monetary Penalty and as otherwise prayed for herein.

7 **II. JURISDICTION**

8 A. The California Department of Insurance (Department) brings this matter before the
9 Commissioner pursuant to the provisions of CIC section 790 et seq. and section 12900 et seq.

10 **III. PARTIES**

11 A. MEGA is, and has been since from September 04, 1984, a holder of a Certificate of
12 Authority (Certificate Number 2976-9) issued by the Commissioner to act in the capacity of a
13 Life and Disability Insurer.

14 B. MID-WEST , a subsidiary of MEGA, is, and has been since December 11, 1986, a
15 holder of a Certificate of Authority (Certificate Number 3067-6) issued by the Commissioner to
16 act in the capacity of a Life and Disability Insurer.

17 **IV. FACTUAL ALLEGATIONS**

18 A. The Department conducted a Market Conduct Examination (examination) of
19 MEGA and MID-WEST pursuant to the authority granted under CIC sections 730, 733, 736, and
20 790.04; and title 10, CCR, section 2695.3, subsection (a). The on-site portion of said examination
21 was conducted from April 9, 2001 through April 27, 2001, in Dallas, Texas.

22 B. During said examination the Department reviewed a sample of 654 out of a total
23 population of 84,227 claim files that were closed by MEGA during the period of February 1,
24 2000 though January 31, 2001. Of the 654 claim files reviewed, violations of applicable
25 provisions of the CIC and CCR were found in at least 75 files, representing 116 separate and
26 distinct violations of the CIC and/or CCR.

27 C. In addition, the Department reviewed a sample of 435 of a total population of 63,888
28 claim files that were closed by MID-WEST during the period of February 1, 2000 through

1 January 31, 2001. Of the 435 files reviewed, violations of applicable provision of the CIC and/or
2 CCR were found in at least 45 files, representing 45 separate and distinct violations of the CIC
3 and/or CCR.

4 D. Prior to the on-site portion of said examination, the Department requested and
5 received from Respondents' a claims detail report depicting the total number of claims during the
6 audit period including the dates of loss and the dates each claim was received, denied and/or paid.
7 A review of this document has identified further violations. A summary of the list of said
8 violations is attached as Exhibits C and captioned: Summary of Total Claims Data.

9 E. All identifying and privileged information regarding the claim files referenced in
10 this pleading has been redacted from the exhibits attached hereto for purposes of publication on
11 the Department's public website pursuant to the provisions of CIC Section 12938.

12 F. Subsequent to the commencement of this action, the Department was informed
13 that Respondents' did delay in the processing payments and failed to pay interest on claims closed
14 during the period January 1, 1998 through January 31, 2000.

15 **V. STATEMENT OF CHARGES RE: MEGA**

16 A. In at least 12 claims (Exhibit A-1) Mega failed to disclose all benefits, coverage,
17 time limits or other provisions of the insurance policy. Each act constitutes a violation of title 10,
18 CCR, section 2695.4, subsection (a) and CIC section 790.03 subsection (h)(1), (3) and (5).

19 B. In at least 3 claims (Exhibit A-2) Mega failed to record in the claim file the date
20 the Company received, date(s) the Company processed and date the Company transmitted or
21 mailed every relevant document in the file. Each act constitutes a violation of CCR, section
22 2695.3, subsection (b)(2) and CIC section 790.03, subsection (h) (2) and (3).

23 C. In at least 1 claim (Exhibit A-3) Mega failed to maintain all documents, notes and
24 work papers (including correspondence) which reasonably pertain to each claim in such detail
25 that pertinent events and the dates of the events can be reconstructed and the licensee's action
26 pertaining to the claim can be determined. Each act constitutes a violation of CCR, section
27 2695.3, subsection (a) and CIC section 790.03, subsection (h)(2) and (3).

28 D. In at least 1414 instances (Exhibit "C-2" and Exhibit "A-4," ten of which are

1 duplicated in Exhibit "C-2") Mega failed to effectuate prompt, fair and equitable settlement of the
2 claim in which liability had become reasonably clear and/or failed to affirm or deny coverage
3 within a reasonable time after proof of loss requirements had been completed. Specifically, Mega
4 did not immediately, but in no event more than forty (40) calendar days after receipt of a proof of
5 claim, accept or deny the claim, in whole or in part; and/or notify the claimant of all bases for
6 such denial; and/or notify the claimant, in writing, that the additional time and, if necessary,
7 additional information was necessary to make such determination; and/or thereafter, every thirty
8 (30) days, provide such notification until such determination was made, and upon acceptance of
9 the claim, in whole or part, immediately, but in no event more than thirty (30) calendar days later,
10 tender payment or otherwise take action to perform its obligation. Each act constituting a
11 violation of CCR section 2695.7, subsection (b), (c)(1)(2) and (h) and CIC Section 790.03,
12 subsection (h)(4) and (5).

13 E. In at least 1 claim (Exhibit A-5) MEGA failed to adopt and implement reasonable
14 standards for the prompt investigation and processing of claims. Each act constitutes a violation
15 of CIC section 790.03, subsection (h)(3).

16 F. In at least 1 claim (Exhibit A-6) MEGA failed to include a statement in their claim
17 denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she
18 may have the matter reviewed by the California Department of Insurance. Each act constitutes a
19 violation of CCR section 2695.7, subsection (b)(3) which also is a violation of CIC section
20 790.03, subsection (h)(3).

21 G. In at least 31 claims (Exhibit A-7) MEGA failed to notify the beneficiary that
22 interest will be paid or failed to specify the rate of interest. Said acts constitute violations CIC
23 section 10172.5, subsection (b) and CIC section 790.03, subsection (h)(3) and (5).

24 H. In at least 6 claims (Exhibit A-8) MEGA failed to reimburse claims within a
25 reasonable period of time. Each act constitutes a violation of CIC section 10172.5, subsection (c)
26 which also is a violation of CIC section 790.03, subsection (h)(3) and (5).

27 I. During the period January 1, 1998 through and including January 31, 2000 and, in at
28 least 14,637 claims (Exhibits C-1, C-3 and A-9) during the audit period, MEGA failed to

1 reimburse the claim, in whole or in part; and/or failed to notify the claimant in writing that the
2 claim was contested or denied, as soon as practical, but no later than 30 working days after receipt
3 of the claim; and/or pay interest on an uncontested claim, or portion thereof, after thirty working
4 days commencing 30 working days after receipt of the receipt of the claim. Each act constitutes a
5 violation of CIC section 10123.13 which is a violation CIC section 790.03, subsection (h)(3) and
6 (5).

7 J. As provided in the paragraphs III-A – VI-I, above, Mega, has failed to adopt and
8 implement reasonable standards for the prompt investigation and processing of claims as required
9 by CIC section 790.03, subsection (h)(3)

10 K. As provided in paragraphs V-A through V-J, above, MEGA has failed to carry out
11 their contracts in good faith and or conducting its business fraudulently. Said acts constitute a
12 violation of CIC section 704.

13 L. The total number of claims processed by Respondent, MEGA, during the audit
14 period was 84,227. The pattern and frequency of the acts and violations alleged in paragraphs
15 herein demonstrate they were undertaken knowingly or constitute a general business practice.

16 **VI. STATEMENT OF CHARGES RE: MID-WEST**

17 A. In at least 215 instances (Exhibit C-5, Exhibit “B-1”, 5 of which are duplicated in
18 Exhibit C-5) MID-WEST failed to effectuate prompt, fair and equitable settlements of claims in
19 which liability had become reasonably clear and/or failed to affirm or deny coverage within a
20 reasonable time after proof of loss requirements had been completed. Specifically, Mid-West did
21 not immediately, but in no event more than forty (40) calendar days after receipt of a proof of
22 claim, accept or deny the claim, in whole or in part; and/or notify the claimant of all bases for
23 such denial; and/or notify the claimant, in writing, that additional time and, if necessary,
24 additional information was necessary to make such determination; and/or thereafter, every thirty
25 (30) days, provide such notification until such determination was made; and/or upon acceptance
26 of the claim, in whole or part, immediately, but in no event more than thirty (30) calendar days
27 later, tender payment or otherwise take action to perform its obligation. Each act constituting a
28 violation of CCR section 2695.7, subsection (b), (c)(1)(2) and (h) and CIC Section 790.03,

1 subsection (h)(4) and (5). Each act constitutes a violations of CCR section 2695.7, subsection (b)
2 and which constitute violations of CIC section 790.03, subsection (h)(5).

3 B. In at least 1 claim (Exhibit B-3) MID-WEST failed maintain a claim file containing
4 all documents, notes and work papers which pertain to the claim. Each act constitute a violation
5 of CCR section 2695.3 subsection (a) which also is a violation of CIC section 790.03, subsection
6 (h)(5).

7 C. During the period January 1, 1998 through and including January 31, 2000 and, in at
8 least 13,958 claims (Exhibits C-4, C-6 and B-4) during the audit period, MID-WEST failed to
9 reimburse the claim, or any portion thereof; and/or failed to notify the claimant in writing that the
10 claim was contested or denied, as soon as practical, but no later than 30 working days after receipt
11 of the claim; and/or pay interest on any uncontested claim, or portion thereof, commencing 30
12 working days after receipt of the receipt of the claim. Each act constitutes a violation of CIC
13 section 10123.13 which is a violation CIC section 790.03, subsection (h)(3) and (5).

14 D. As provided in the paragraphs VI-A through VI-C, above, MID-WEST, has failed to
15 adopt and implement reasonable standards for the prompt investigation and processing of claims
16 as required by CIC section 790.03, subsection (h)(3).

17 E. As provided in paragraphs VI-A through VI-D, above, MID-WEST, has failed to
18 carry out their contracts in good faith and or conducting its business fraudulently. Said act
19 constitute a violation of CIC section 704.

20 F. The total number of claims processed during the audit period by MID-WEST, was
21 63,888. The pattern and frequency of the acts and violations alleged in paragraphs herein
22 demonstrate they were undertaken knowingly or constitute a general business practice.

23 **VII . STATEMENT OF MONETARY PENALTY [CIC §§790.05 & 790.35]**

24 A. The facts alleged in paragraphs III-A through VI-F, above, constitute grounds for
25 the Commissioner, pursuant to CIC sections 790.05 and 790.35 to impose an order that
26 Respondents, MEGA and MID-WEST, and each of them, cease and desist from engaging in such
27 unfair and deceptive practices and pay a civil penalty not to exceed five thousand (\$5,000) dollars
28

1 for each act, or if the act or practice is willful, a civil penalty not to exceed ten thousand
2 (\$10,000) dollars for each act.

3 B. The facts alleged in paragraphs III-A through VI-F above, constitute grounds for the
4 Commissioner to suspend their Certificates of Authority for a period not to exceed on year
5 pursuant to CIC section 704, subsection (b) or, pursuant to CIC section 704.7, to impose a fine in
6 an amount not exceeding \$55,000 in lieu of said suspensions.

7 **IX. PRAYER**

8 The Commissioner requests, with regard to Respondents Mega and Mid-West, the
9 following:

10 A. Pursuant to CIC Section 790.05 an Order to Cease and Desist engaging in such
11 unfair acts or practices in violation of CIC Section 790.03, as set forth above;

12 B. Pursuant to CIC Section 790.035, for willful acts in violation of section 790.03
13 and CCR sections 2695.1 through 2695.17, as set forth above, a penalty in an amount to be fixed
14 by the Commissioner not to exceed ten thousand dollars (\$10,000.00) for each act; and/or for
15 each unfair or deceptive act or practice not found to be willful, a penalty in an amount to be fixed
16 by the Commissioner not to exceed five thousand dollars (\$5,000.00) for each act;

17 C. Pursuant to CIC sections 10123.13 and 10172.5 pay interest at an amount to be
18 determined on each of the claims found not to have been paid in compliance with those sections;
19 and,

20 D. For acts in violation of CIC section 704, subsection (b), suspension of the
21 Respondents', and each of their, Certificates of Authority for a period not exceeding one-year or,
22 in lieu thereof, a fine in the amount of fifty-five thousand (\$55,000) dollars.

23 Date: August 11, 2004.

24 JOHN GARAMENDI,
Insurance Commissioner

25
26
27 By: _____
28 WESLEY E. KENNEDY
Senior Staff Counsel